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HB 1388 - Labor and Employment – Noncompete and Conflict of Interest Clauses – Veterinary and Health Care Professionals

House Health and Government Operations Committee

March 5, 2024

SUPPORT

Donna S. Edwards

President

Maryland State and DC AFL-CIO

Madame Chair and members of the Committee, thank you for the opportunity to submit testimony in support of HB 1388. My name is Donna S. Edwards, and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of Maryland's 300,000 union members, I offer the following comments.

Noncompete clauses and conflict of interest provisions restrict the ability of employees to find new employment. These agreements used to be reserved for executive level professionals involving work with intellectual property. Increasingly, noncompete and conflict of interest clauses are being used to restrict all types of employees. These bans can last for a year or two after employment, resulting in newly unemployed employees not being able to get a job in their field without moving or traveling long distances to work. Overuse of noncompete clauses has become such a problem that the Federal Trade Commission is considering a rule to ban them entirely, arguing that they rob employees of \$300 billion in earnings each year.¹

HB 1388 bans these noncompete provisions from being used in licensed veterinary or health occupations. There is already a shortage of 15,000 veterinarians, why should the state allow noncompete agreements that exacerbate this shortage? A Government Accountability Office study found that, "18 percent of workers were subject to noncompete agreements (NCAs), and one of the studies estimated that 38 percent of workers had been subject to an NCA at some time in their careers." They also found that, "NCAs restrict job mobility, and may reduce wages and new firm creation. Two of these studies found that even when NCAs are not legally enforceable in a state, NCAs reduce job mobility and workers with NCAs are less likely to search for new jobs. Studies also found that NCAs lower workers' earnings, on average, though certain groups like executives may experience mixed effects. In addition, studies found that NCAs may discourage workers from starting new firms."² These agreements negatively impact the rights and freedoms of workers and stifle free market competition.

¹ Federal Trade Commission, "FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition." January 5, 2023.

² "Noncompete Agreements: Use is Widespread to Protect Business' Stated Interests, Restricts Job Mobility, and May Affect Wages." GAO-23-103785. Published: May 11, 2023. Publicly Released: May 16, 2023.

In a 1972 ruling in *Becker v. Bailey*, the Maryland Court of Appeals took up the issue of enforceable noncompetition agreements in employment contracts. The Court found noncompetition agreements in employment contracts to be enforceable provided they met several factors. Included among those factors is the requirement to not impose an undue hardship on the employee or disregard the interests of the public. We believe that many of these agreements do both. The current use of these agreements are a method to restrict a worker's ability to work, harming the dynamic nature of our economy, which operates on the principle that employers compete against each other to attract employees.

HB 1388 helps level the playing field for both workers and employers. We ask for a favorable report.